

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NICHOLAS ED BUSKIRK,)	Case No. 5:24-cv-01444-CV-JC
)	
Petitioner,)	
)	
v.)	ORDER ACCEPTING FINDINGS,
)	CONCLUSIONS, AND
PATRICK COVELLO, Warden,)	RECOMMENDATIONS OF
)	UNITED STATES MAGISTRATE
)	JUDGE
)	
Respondent.)	[DOCKET NO. 3]

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Verified Petition for Writ of Habeas Corpus by a Person in State Custody Under 28 U.S.C. § 2254 and the supporting memorandum (“Petition”), the parties’ submissions in connection with petitioner’s Motion for a Stay Pending Exhaustion of State Court Remedies (“Stay Motion”), and all of the records herein, including the February 14, 2025 Report and Recommendation of United States Magistrate Judge (“Report and Recommendation”). The Court approves and accepts the Report and Recommendation.

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1 IT IS HEREBY ORDERED:

2 1. The Stay Motion is granted to the extent it seeks a stay pursuant to
3 Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003) subject to the below-specified
4 conditions/limitations.

5 2. Claims Eight, Nine, and Ten of the Petition are dismissed without
6 prejudice.

7 3. The resulting fully exhausted Petition and this action are stayed
8 for petitioner to exhaust only Claims Eight, Nine, and Ten.

9 4. Petitioner shall file periodic reports detailing the status of the
10 state court proceedings beginning sixty (60) days from the date of this Order and
11 every sixty (60) days thereafter. If petitioner has no new information regarding the
12 status of petitioner's efforts to exhaust his state remedies in a given period because
13 a matter remains pending in state court, petitioner must nonetheless file a status
14 report advising the Court of such fact.

15 5. Petitioner shall, within thirty (30) days of any state decision
16 granting petitioner habeas relief or, if none, within thirty (30) days of the
17 California Supreme Court's decision relative to a state habeas petition containing
18 Claims Eight, Nine, and Ten, file a notice of such decision and attach as an exhibit
19 thereto, a copy of such decision.

20 **6. Petitioner is cautioned that:**

21 a) the failure to meet any of the time requirements set out
22 above may result in an order vacating the stay, *nunc pro tunc*, may preclude
23 consideration of petitioner's unexhausted claims, and may result in dismissal
24 of this action for lack of prosecution or failure to obey this Order; and

25 b) the granting of the stay pursuant to Kelly, in no way
26 relieves petitioner of the obligation to comply with the one-year statute of
27 limitations under 28 U.S.C. section 2244(d)(1) and nothing in this Order
28 should be construed to suggest that the Court has made any determination as

1 **to whether it would ultimately permit petitioner to amend the Petition to re-**
2 **add Claims Eight, Nine, and Ten once they have been exhausted.**


3 7. Noting in this Order precludes respondent from raising procedural or
4 other objections/defenses to the Petition, any amended federal petition or any
5 claims contained therein.

6 8. The Clerk shall administratively close this case during the
7 pendency of the stay and remove this case from the Court's active case load.

8 9. The Clerk shall serve copies of this Order on counsel for
9 petitioner and respondent.

10 IT IS SO ORDERED.

11 DATED: 4/16/25

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14 HONORABLE CYNTHIA VALENZUELA
15 UNITED STATES DISTRICT JUDGE
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